

COMPLIANCE BOARD OPINION 93-1

January 7, 1993

The Honorable Thelma Campbell

The Open Meetings Compliance Board has considered your complaint regarding an alleged violation of the Open Meetings Act by the Rock Hall Town Council on November 5, 1992. Your complaint concerns the legality of an "impromptu meeting" among the Mayor, the members of the Council, and the Town Attorney that took place 15 minutes before the start of the regularly scheduled 7:30 p.m. meeting of the Mayor and Town Council on November 5. Your complaint states that "[t]he purpose of the impromptu meeting was to discuss the possible passage of an Emergency Ordinance to take place at the 7:30 PM meeting."

The Compliance Board received a timely response from G. Mitchell Mowell, Esquire, the Town Attorney. The response states that the impromptu meeting was held to apprise the Council of the results of certain legal research about the legality of a non-binding referendum:

I was asked to research whether the Town of Rock Hall could conduct a public vote on the issue of whether the town should purchase certain real property for construction of a parking lot. In a phone call on November 5 I informed the Mayor that such a vote was possible as long as the result was not binding on the council. The Mayor asked me to arrive at the regularly scheduled council meeting 15 minutes early so that I could impart this information to the rest of the council.

At 7:15 (15 minutes before the regularly scheduled meeting) I met with the council in the hallway advising them of the result of my research – *i.e.* that an advisory referendum was permissible....

At the regularly scheduled meeting the council passed an ordinance scheduling the non-binding referendum.

The "session" held at 7:15 p.m. was solely for the purpose of informing the council of the results of my research. No action was taken. I could have filed a written memorandum of my findings, but time constraints prevented me from doing so.

The Open Meetings Act is applicable to the "impromptu meeting" at 7:15 p.m. The matter under discussion related to the enactment of an ordinance, manifestly a "legislative function" within the meaning of §10-502(f) of the State Government Article, Maryland Code. Further, a majority of the Council was present in the hallway to consider information directly relevant to this item of public business. Despite the impromptu nature of the session, it was a "meeting" of a public body as defined in §10-502(g).

From the account of Mr. Mowell, it appears that this session could have been properly closed under §10-508(a), which authorizes a public body to meet in closed session to "consult with counsel to obtain legal advice." In this instance, Mr. Mowell was providing legal advice about the legality of an ordinance to hold a non-binding referendum.

Even when a session may permissibly be closed, however, a public body must follow certain procedural requirements before invoking the exception that permits the closed meeting. The public body must hold a vote in open session to decide whether to close the session and may hold the closed session only if the motion to do so is supported by a majority of the members of the public body. §10-508(d)(1) and (2)(i). In addition, the presiding officer is responsible for providing "a written statement for the reason for closing the meeting, including a citation of the authority under this section, and a listing of the topics to be discussed." §10-508(d)(2)(ii). Arrangements must be made for minutes to be kept of the closed session. §10-509(b) and (c). Finally, the minutes of the next open session of the public body are to include certain information about the prior closed session. §10-509(c)(2). It appears that none of these procedural requirements was followed for the session that began at 7:15 on November 5.

The Compliance Board recognizes that the circumstances described by Mr. Mowell – the need for a quick report from its lawyer prior to Council action on the ordinance – might have inclined the Council toward the kind of informal conversation that occurred. Yet the General Assembly has made a policy judgment that certain procedures *must* be followed before members of the public are to be denied access to any session of a public body that is within the scope of the Open Meetings Act.

Because the Rock Hall Town Council did not follow those procedures, it violated the Act.

OPEN MEETINGS COMPLIANCE BOARD

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